IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs June 27, 2006

STATE OF TENNESSEE v. CHARLES BENNY SEABOLT, JR.

Appeal from the Criminal Court for Claiborne County
No. 12175 E. Shayne Sexton, Judge

No. E2005-02038-CCA-R3-CD Filed October 5, 2006

A Claiborne County jury convicted the defendant, Charles Benny Seabolt, Jr., of aggravated burglary, aggravated rape, especially aggravated kidnapping, and assault. The trial court imposed the maximum sentences for the conviction offenses and ordered consecutive alignment, for a total effective sentence of 56 years. On appeal, the defendant contends that the evidence is legally insufficient to support his convictions and that his effective sentence is excessive. After a review of the record and the parties' briefs, we modify the sentence for especially aggravated kidnapping to 22 years, making the effective sentence 53 years. In all other respects, we affirm the trial court's judgments.

Tenn. R. App. P. 3; Judgments of the Criminal Court are Affirmed as Modified.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ROBERT W. WEDEMEYER, J., joined.

Jared B. Karnes, Knoxville, Tennessee (on appeal); Martha J. Yoakum, District Public Defender; and Dan Korth, Assistant District Public Defender (at trial), for the Appellant, Charles Benny Seabolt, Jr.

Paul G. Summers, Attorney General & Reporter; Leslie Price, Assistant Attorney General; William Paul Phillips, District Attorney General; and Jared R. Effler, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The events giving rise to this appeal occurred on the morning of July 21, 2002, at a residence located on 182 Cardwell Lane in Claiborne County. Three individuals were present at that time: Jessica Johnson, her three-year-old daughter, and the defendant. Ms. Johnson and the defendant testified at trial, and their respective versions of what happened sharply clashed.

Viewed in the light most favorable to the state, *see State v. Duncan*, 698 S.W.2d 63, 67 (Tenn. 1985), the proof at trial showed that Ms. Johnson lived in Hancock County with her husband and two children. Ms. Johnson had been helping her mother, who was in the process of moving to Louisiana. On July 21, Ms. Johnson drove herself and her older child to her mother's residence in Claiborne County. En route, Ms. Johnson noticed a green automobile behind her. Ms. Johnson arrived at the residence without incident and parked in the driveway. She and her daughter entered the back door of the house, and through a window, Ms. Johnson spotted in the driveway a green automobile driven by a man wearing glasses and a black shirt. The man, later identified as the defendant, parked in the driveway and approached the front porch.

Ms. Johnson testified that she opened the door "a little" to see what the defendant wanted, and he asked if she knew where Jack Richardson lived. Ms. Johnson responded that she did not know such an individual, and she suggested that the defendant inquire of the occupants who lived in a trailer at the bottom of the hill. The defendant then pushed her, and they fell to the floor. They struggled, and Ms. Johnson tried to stab the defendant with a pair of scissors and hit him with a vase. The defendant disarmed her and began choking her. Ms. Johnson lost consciousness, but when revived, she ran to the laundry room to search for a firearm. Her daughter was in one of the back bedrooms, and the defendant was holding the bedroom door shut, keeping the child confined inside the bedroom.

The defendant then chased Ms. Johnson, pulled her out of the laundry room and down the hallway. Ms. Johnson managed to escape from the defendant and ran toward the living room door, but when she realized that her daughter was not following her, she stopped. Ms. Johnson asked the defendant what he wanted, implored him not to hurt her or her daughter, and assured him that she would not say anything. The defendant again pulled her down the hallway. They entered an empty bedroom, and the defendant locked the door. Ms. Johnson went into the adjoining bathroom and tried unsuccessfully to open the window. She returned to the bedroom where the defendant was removing his clothes. She testified that she could hear her daughter crying.

The defendant grabbed and pulled her to the floor. He unbuttoned and unzipped her pants, and he began touching her. He removed Ms. Johnson's tampon and then proceeded to rape her. After he ejaculated, the defendant released Ms. Johnson. She dressed, unlocked the door and opened it, picked up her crying child, and ran outside the house. She got into her vehicle and was backing up when the defendant appeared and warned her against talking to anyone. The defendant got into his car, and as he was leaving, Ms. Johnson wrote down his tag number.

The phone service at the residence had been discontinued. Ms. Johnson drove away and stopped at a house to ask for help. The woman at the house telephoned E 911, and medical personnel arrived and transported Ms. Johnson to the hospital. The medical providers performed a "rape kit," examined her, and released her. Ms. Johnson catalogued her injuries as including "a busted lip," choke marks on her neck, abrasions on the back of her neck, arms and knuckles, and a thumb injury. When Ms. Johnson was able to closely examine her daughter the following morning, she observed marks on the child's neck, arms, back, and one leg.

The defendant was apprehended shortly after driving away from the Cardwell Lane residence.

Doctor Michael Turbeville, a forensic scientist with the Tennessee Bureau of Investigation in Nashville, testified that he worked as an analyst in the serology DNA unit. He received and analyzed a known blood standard from Ms. Johnson, vaginal swabs from the rape kit performed on Ms. Johnson at the hospital, and a known blood standard from the defendant. The results of his analysis showed that the sperm isolated on the vaginal swabs matched the defendant's blood standard.

The state offered testimony corroborating Ms. Johnson's and her daughter's injuries. Tim Thomason, a licensed physician's assistant, was on duty at the Claiborne County Hospital on July 21, and he examined Ms. Johnson, who told him that she had been assaulted and raped. Mr. Thomason's examination revealed a cut to Ms. Johnson's lower left lip, multiple abrasions to her forearms and upper arms, and abrasions to neck, back, wrist, and knuckles. Doctor Michael Hood examined Ms. Johnson's daughter at the Claiborne County Hospital emergency room on July 25. He noted multiple bruises, including one on the right knee, two on the small of her back, one on the right side and one on the left, a small bruise near the right-side base of the neck, and one bruise on the right shoulder.

Lori Widner, the woman who telephoned E 911 for Ms. Johnson, testified that Ms. Johnson was crying and had a small child with her. Ms. Widner observed marks on Ms. Johnson's neck, blood on the corners of her mouth, and a wrist injury. After several attempts, Ms. Johnson finally communicated that she had been raped. Ms. Widner described the child as "just really quiet."

Claiborne County Sheriff's Deputies, Shawn Cupp and Julie Luckadoo, responded to the E 911 report of a possible rape. Deputy Cupp arrived first at Ms. Widner's residence at 390 Bear Creek Road where he discovered Ms. Johnson sitting on the back porch crying and hysterical. After the emergency medical technicians took Ms. Johnson to the hospital, Deputy Cupp drove to the Cardwell Lane residence to secure the area. When he completed that task, he drove to the sheriff's department where the defendant was being questioned. Deputy Cupp obtained the defendant's permission to draw blood and to search the defendant's property and premises. Deputy Cupp also transported the defendant to the hospital, remained while the blood sample was drawn, and delivered the sample to Detective John Malone.

Shift Supervisor Luckadoo briefly questioned Ms. Johnson and accompanied her to the hospital. Supervisor Luckadoo witnessed the evidence collection for the rape kit and delivered the evidence to Detective Malone.

Investigator Michael Gray processed the scene at the Cardwell Lane residence. He photographed the inside and outside of the residence, and at trial he identified the photographs taken.

The state called Ernie Womack, Claiborne County Chief Deputy, to testify about the defendant's arrest. Deputy Womack was on duty on July 21 when he passed a green Subaru going in the opposite direction on Blue Top Road. Having earlier received a police bulletin to look for a white male with a light mustache, wearing glasses, and driving a green Nissan or Subaru, Deputy Womack decided to investigate. He turned, activated his emergency equipment, and pursued the Subaru. The vehicle traveled approximately one mile before stopping. Deputy Womack ordered the defendant to get out of the vehicle; the defendant complied, and Deputy Womack handcuffed and placed the defendant in the back of the police vehicle. When Deputy Womack sought the defendant's consent to search the Subaru, the defendant "looked up at [Deputy Womack,] and [the defendant] told [Deputy Womack] that [he] could save [the deputy] a lot of time, there was no need in searching his car . . . [because the deputy] had found the guy [the deputy] was looking for." Deputy Womack then arrested the defendant and transported him to the sheriff's department.

Former Claiborne County Sheriff's Detective David Honeycutt testified that around midday on July 21, a dispatcher advised him that a possible rape suspect had been arrested and was being transported to the criminal investigation division of the sheriff's department. Detective Honeycutt met with the defendant, Deputy Womack, and Detective Malone. Detective Honeycutt advised the defendant of his rights, and the defendant agreed to be questioned.

Detective Honeycutt identified the defendant's signed statement and read from the statement, in which the defendant claimed that he followed Ms. Johnson and that when he approached the house, she was standing in the doorway. The defendant said that he asked her if she knew Jack Richardson – a fictional person. Ms. Johnson said that she did not know anyone by that name, and she informed the defendant that no one else was present at the house. According to the defendant at that point, he "grabbed her and [they] started struggling." The struggling eventually ceased, and the defendant said that they sat on the floor talking. Ms. Johnson offered to perform oral sex on the defendant if he would not harm her or the child, who was in the room. The defendant agreed, and he told Detective Honeycutt that Ms. Johnson then searched through the house and her automobile trying to locate a condom. Her efforts were unsuccessful, and she and the defendant "talked some more" and went to an empty bedroom. The defendant claimed that Ms. Johnson went to the bathroom to remove a tampon, and when she returned she spread out on the floor, and the couple had sex. After the defendant ejaculated, they dressed, and Ms. Johnson ran out of the bedroom to find her daughter. The defendant followed and found Ms. Johnson and the child outside in their vehicle. The defendant told Detective Honeycutt that Ms. Johnson swore not to say anything. The defendant drove to his house where he and his wife got into a "fuss." The defendant left and was driving on Blue Top Road when Detective Womack stopped him. The defendant told Detective Honeycutt that he decided he was going to have sex with Ms. Johnson "when [he] was told by her at the door that no one else was there and I grabbed her."

The defendant testified in his own defense. He began by asserting that the statement introduced through Detective Honeycutt was untrue and then verbally meandered through his version of events. Notably, he did not deny following Ms. Johnson and having sex with her, although he insisted that she consented. He also did not contest that Ms. Johnson was injured, although he

disputed how the injuries occurred. He did, however, deny locking the child in one of the bedrooms, denied causing any injuries to the child, and claimed, instead, that Ms. Johnson accidently injured the child. He said that as he and Ms. Johnson were leaving the residence, he "thanked" her, and she replied, "[N]o, it's nothing. You're welcome." As for his incriminating statement, the defendant testified that Detective Honeycutt pressured him to sign the document and warned the defendant that the statement would not be rewritten. When asked on redirect examination if he believed that Ms. Johnson consented to the intercourse, the defendant answered that "she might have because she was afraid that I might hurt her." In a letter to his wife mailed after his arrest, the defendant wrote that "they are calling it rape . . . because I scared her into having sex so it is still rape."

The defendant concluded his proof by briefly recalling Detective Gray to identify and introduce another photograph taken at the scene. The photograph showed a tampon in the bathroom toilet.

The jury deliberated and found the defendant guilty of aggravated burglary, aggravated rape of Ms. Johnson, assault of Ms. Johnson's child, and especially aggravated kidnapping of Ms. Johnson's child. The trial court approved the verdicts and, at a separate sentencing hearing, imposed an effective sentence of 56 years.

On appeal, the defendant contests the sufficiency of the evidence and argues that his sentence is excessive. As we shall explain, we affirm the defendant's convictions, but we modify the sentence for his especially aggravated kidnapping conviction.

I. Sufficiency of the Evidence

The defendant was convicted of aggravated burglary in count one. As relevant to this case, burglary is defined as follows: "A person commits burglary who, without the effective consent of the property owner . . . [e]nters a building other than a habitation (or any portion thereof) not open to the public, with the intent to commit a felony, [namely rape]." Tenn. Code Ann. § 39-14-402(a)(1) (2003). Aggravated burglary is the burglary of a habitation. *See id.* § 39-14-403.

The defendant was convicted of aggravated rape in count two. As relevant to this case, the defendant was charged with engaging in "unlawful sexual penetration" of Ms. Johnson and thereby "caus[ing] bodily injury," in violation of Code section 39-13-502(a)(2). *See id.* § 39-13-502(a)(2) (2003).

The defendant was convicted in count three of misdemeanor assault as a lesser included offense of child abuse of a child under six years of age. *See id.* § 39-13-101, -15-401(a) (2003).

Last, the defendant was convicted in count four of especially aggravated kidnapping. As relevant to this case, "[e]specially aggravated kidnapping is false imprisonment, as defined in §

39-13-302 . . . [w]here the victim [, Ms. Johnson's minor child,] was under the age of thirteen (13) at the time of the removal or confinement." *See id.* § 39-13-305(a)(2) (2003).

The standard for an appellate court when reviewing a challenge to the sufficiency of the evidence is "whether, considering the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002); *see also* Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2791-92 (1979); *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999). Because a verdict of guilt removes the presumption of innocence and imposes a presumption of guilt, the burden shifts to the defendant upon conviction to show why the evidence is insufficient to support the verdict. *See State v. Evans*, 108 S.W.3d 231, 237 (Tenn. 2003); *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). On appeal, the state is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom. *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000); *see also Carruthers*, 35 S.W.3d at 558; *Hall*, 8 S.W.3d at 599.

A verdict of guilt by the trier of fact resolves all conflicts in the evidence in favor of the prosecution's theory. *See State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). "Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court does not re-weigh or re-evaluate the evidence." *Evans*, 108 S.W.3d at 236 (citing *Bland*, 958 S.W.2d at 659). Nor may this court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. *Id.* at 236-37. The supreme court articulated the rationale for this rule as follows:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing *Carroll v. State*, 212 Tenn. 464, 370 S.W.2d 523 (1963)).

The defendant in this case does not differentiate among his convictions in arguing evidence insufficiency. Rather, he claims in a general fashion that the trial testimony was inconsistent regarding the timing and source of Ms. Johnson's bruises, that the evidence showed that he was provoked when Ms. Johnson smiled and waived at him when they first encountered each other on Blue Top Road, that Ms. Johnson consented to sexual intercourse, and that he was already standing inside the doorway when he decided to grab Ms. Johnson.

These were matters submitted to the jury for its consideration, and we will not second-guess its determinations. The jury obviously found Ms. Johnson's testimony to be credible; moreover, the defendant's statement that Ms. Johnson may have consented to intercourse "because she was afraid that [he] might hurt her" does not operate as legal defense to the aggravated rape charge. The state presented its evidence in a straightforward, coherent fashion, and we have no hesitation in holding that any rational trier of fact could conclude, beyond a reasonable doubt, that the defendant was guilty of aggravated burglary, aggravated rape, assault[1], and especially aggravated kidnapping. The defendant gave a highly incriminating statement to the investigating officers, and the injuries to Ms. Johnson and her daughter were independently corroborated by expert medical testimony. The age of Ms. Johnson's child was undisputed, and Ms. Johnson's testimony addressed all of the essential elements of the charged offenses.

Accordingly, we affirm the defendant's convictions.

II. Sentencing

The defendant attacks his sentence as excessive and argues (1) that the trial court failed to consider mitigating factors that Ms. Johnson provoked his actions and that his mental and physical conditions were impaired because of sleep deprivation and use of Orajel; (2) that the defendant's actions did not create a risk to human life because, when Ms. Johnson tried to attack him with a vase and a pair of scissors, he simply took the items away from her; and (3) that his prior criminal history consists only of misdemeanor traffic convictions and past marijuana use.

Our review of this matter is well-settled. When a defendant challenges the length or manner of service of a sentence, it is the duty of this court to conduct a de novo review of the record with a presumption that "the determinations made by the court from which the appeal is taken are correct." Tenn. Code Ann. § 40-35-401(d) (2003). This presumption is "'conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.'" *State v. Ross*, 49 S.W.3d 833, 847 (Tenn. 2001) (quoting *State v. Pettus*, 986 S.W.2d 540, 543 (Tenn. 1999); *see State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). The presumption does not apply to the legal conclusions reached by the trial court in sentencing a defendant or to the determinations made by the trial court which are predicated upon uncontroverted facts. *State v. Dean*, 76 S.W.3d 352, 377 (Tenn. Crim. App. 2001); *State v. Butler*, 900 S.W.2d 305, 311 (Tenn. Crim. App. 1994); *State v. Smith*, 891 S.W.2d 922, 929 (Tenn. Crim. App. 1994). In

[1] As part of our review, we attempted to discern whether the offense of assault was properly submitted to the jury as a lesser included offense of child abuse. We note that the indictment charged that the defendant "did unlawfully, feloniously and knowingly, and other than by accidental means, inflict injury on [Ms. Johnson's daughter], a child under six (6) years of age, so as to adversely affect the health and welfare of said child." Assault may be committed, *inter alia*, via intentionally, knowingly, or recklessly causing bodily injury to another, T.C.A. § 39-13-101(a)(1) (2003), or intentionally or knowingly causing "another to reasonably fear imminent bodily injury," *id*. § 39-13-101(a)(2). The latter cited mode may not constitute a lesser included offense of child abuse; however, a lesser included offense analysis was frustrated by the absence in the record of the trial court's instructions on the mode of assault submitted to the jury as a lesser included offense.

conducting a de novo review of a sentence, we must consider: (a) any evidence received at the trial and/or sentencing hearing; (b) the presentence report; (c) the principles of sentencing; (d) the arguments of counsel relative to sentencing alternatives; (e) the nature and characteristics of the offense; (f) any mitigating or statutory enhancement factors; (g) any statements made by the defendant on his or her own behalf; and (h) the defendant's potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. § 40-35-210 (2003); *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). The party challenging a sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401(d) (2003), Sentencing Comm'n Cmts.

In the case under submission, we conclude that there is ample evidence that the trial court considered the sentencing principles and all relevant facts and circumstances. Therefore, we review its decision de novo with a presumption of correctness.

The trial court imposed a maximum six-year sentence for the defendant's aggravated burglary conviction, *see* Tenn. Code Ann. § 40-35-112(a)(3) (2003) (establishing a minimum of three years and a maximum of six years for Class C offenses, Range I); a maximum 25-year sentence for his aggravated rape conviction, *see id*. § 40-35-112(a)(1) (establishing a minimum of 15 years and a maximum of 25 years for a Class A offense, Range I); a maximum 25-year sentence for his especially aggravated kidnapping conviction, *see id*. § 40-35-112(a)(1); and a sentence of 11 months, 29 days at 75 percent for the misdemeanor assault conviction. The trial court ordered the sentences for the felony convictions to run consecutively, for an effective sentence of 56 years.

Regarding the defendant's arguments, we note that the trial court announced that the defendant's prior criminal convictions did not weigh heavily in the sentencing analysis. In addition, we are in complete agreement with the trial court's assessments that waving and smiling were not provocation and that the defense had not proven any physical or mental impairment. Moreover, despite that the defendant did not stab or bludgeon Ms. Johnson, the evidence showed that he did not hesitate in committing a crime when the risk to human life was high.

We have reviewed the trial court's detailed factual findings and application of enhancement factors.[2] Regarding the aggravated rape conviction, the trial court applied enhancement factors (2) that the defendant has a previous history of criminal convictions, (6) that the defendant treated Ms. Johnson with exceptional cruelty, (7) that the personal injuries inflicted upon the victim were particularly great, and (8) that the offense was committed to gratify the defendant's desire for pleasure or excitement. *See* Tenn. Code Ann. § 40-35-114(2), (6), (7), (8) (2003). In our opinion, application of those enhancement factors were legally appropriate, factually supported, and sufficient

[2] Tennessee Code Annotated section 40-35-114, as amended in 2002 by Public Act 849, § 2(c), effective July 4, 2002, added one enhancement factor and subsequently renumbered all of the original enhancement factors in the statute. We note that the legislature has, again, recently amended and renumbered the enhancement factors, *see* Tenn. Code Ann. § 40-35-114 (Supp. 2005), but these changes became effective for criminal offenses committed on or after June 7, 2005, and do not apply in this case.

to justify a maximum sentence for aggravated rape. *See State v. Timothy Clayton Thompson*, No. E2002-01710-CCA-R3-CD, slip op. at 8-9 (Tenn. Crim. App., Knoxville, Aug. 12, 2003) (pleasure or excitement not an essential element of the offense of aggravated rape and, therefore, may be used as an enhancement factor; actions of defendant, taken with his stated perceptions at the time of the crimes were circumstantial evidence that the factor applied); *Dean*, 76 S.W.3d at 379-80 (applying exceptional cruelty and particularly great personal injuries enhancements to aggravated rape conviction).

Regarding the especially aggravated kidnapping conviction, the trial court applied enhancement factors (2) that the defendant has a previous history of criminal convictions, (5) that a victim of the offense was particularly vulnerable because of age, and (7) that the personal injuries inflicted upon the victim were particularly great. *See* Tenn. Code Ann. § 40-35-114(2), (5), (7) (2003). These enhancement factors, likewise, were properly applied. *See State v. Arnett*, 49 S.W.3d 250, 259-60 (Tenn. 2001) (particularly great injuries contemplate psychological or emotional injuries; objective examples obviate need for expert proof); *State v. Adams*, 864 S.W.2d 31, 35 (Tenn. 1993) (vulnerability enhancement relates more to natural physical and mental limitations of the victim than merely to the victim's age.); *State v. James Lloyd Julian, II*, No. 03C01-9511-CV-00371, slip op. at 27 (Tenn. Crim. App., Knoxville, July 24, 1997) (applying age vulnerability enhancement to conviction for especially aggravated kidnapping of victim under 13 when victim was three years old and ability to get away or request help was "extremely limited").

That said, we recognize that the statute proscribing especially aggravated kidnapping mandates consideration of a mitigation factor. The court "shall consider[]" the offender's voluntarily releasing the victim alive "as a mitigation factor at the time of sentencing." Tenn. Code Ann. § 39-13-305(b)(2) (2003). In the present case, we discern no consideration of this factor by the trial court. Upon our de novo review, we modify the 25-year sentence for especially aggravated kidnapping to 22 years, in consequence of section 39-13-305(b)(2).

Finally, we discern, although the record is somewhat unclear, that regarding the aggravated burglary conviction, the trial court applied enhancement factors (2) that the defendant has a previous history of criminal convictions, (11) that the defendant had no hesitation about committing a crime when the risk to human life was high, and (17) that the crime was committed under circumstances under which the potential for bodily injury to a victim was great. *See* Tenn. Code Ann. § 40-35-114(2), (11), (17) (2003). Aggravated burglary is the burglary of a habitation, *id.* § 39-14-403(a), and serious bodily injury is not an element of this offense, *see State v. James Ruben Conyers*, No. M2002-01007-CCA-R3-CD, slip op. at 24 (Tenn. Crim. App., Nashville, Sept. 5, 2003) (applying sentencing enhancements of high risk to human life and great potential for bodily injury to a victim to aggravated burglary when bodily injury not an element of offenses). As we noted previously, the defendant objects to application of factor (11). The facts and circumstances surrounding the defendant's commission of aggravated burglary, however, demonstrate that by breaking into the house with the intent to rape Ms. Johnson, he had no hesitation about committing a crime in which the risk to human life was high.

Finally, we address the defendant's complaint that he should not have received consecutive sentencing. Pursuant to Tennessee Code Annotated section 40-35-115(a), if a defendant is convicted of more than one criminal offense, the court shall order the sentences to run either consecutively or concurrently. Tenn. Code Ann. § 40-35-115(a) (2003). The trial court may order sentences to run consecutively if the court finds by a preponderance of the evidence the existence of certain enumerated criteria. *Id*. § 40-35-115(b)(1)-(7). Relevant to this case, the trial court relied on criterion (4) that the defendant "is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high." *Id*. § 40-35-115(b)(4). When that basis for consecutive alignment of sentences is invoked, the court is to make two additional findings. *State v. Imfeld*, 70 S.W.3d 698, 708 (Tenn. 2002). First, the trial court must find that an extended sentence is necessary to protect the public from further criminal conduct by a defendant, and, second, it must find consecutive sentencing to be reasonably related to the severity of the offenses. *State v. Wilkerson*, 905 S.W.2d 933, 939 (Tenn. 1995).

We conclude, as did the trial court, that the record supports consecutive alignment of sentences based on the dangerous offender criterion. The trial court was careful to articulate for the record the following findings, inter alia, which we will not disturb:

> These victims were trying to conduct themselves in a way that any one of us would be living, in a home thinking that you are protected. And what the defendant has done, he entered this home, he violated the body of the woman, and he violated the childhood of the young girl, and he violated the sanctity of what a home is supposed to mean to every one of us. And that particular element has been shown overwhelmingly to this Court.
>
> The second part is circumstances surrounding the commission of the offense were aggravated. This record is full of evidence that supports that. This is – in this Court's time on the bench is one of the most aggravated crimes. . . . I have yet to see a crime where the defendant committing such a terrible act continues to blame the victim for lying and for provoking his sexual attack on her . . . . And I want any reviewing Court to know that this Court feels that this – the aggravation in this particular case is overwhelming.
>
> In my opinion, the confinement must be for . . . the protection of our society, not only in this locality. I mean, the question [has been raised] whether or not [the defendant] would actually be in a position to hurt or harm this particular victim. . . . You know, I think confinement for an extended period of time is certainly necessary to protect society.

> . . . [A]s I said in my analysis concerning the maximum punishment, in my opinion, this Court's opinion, the maximum punishments as set out by our Legislature do not do justice to this particular act.

In terms of the need to protect the public from further criminal conduct by this defendant, we add the following comments and considerations supporting consecutive sentencing. Several lengthy letters written by the defendant are included in the record as an addendum to the presentence investigation report and as exhibits introduced at the sentencing hearing. The letters are disturbing, to say the least. One of the letters was sent to the presentence investigator, who noted,

> The offender has subsequently mailed another remorseless and repulsive letter to the writer. It did not appear to shed further light on the offense and was not typed into the report. It is attached an as addendum to the report and is indicative of the offender's failing to take any responsibility for his actions.

The defendant also wrote three letters to Ms. Johnson. She testified at sentencing that her husband found a letter in their mailbox addressed to her with a return address noting "inmate from Claiborne County jail." Ms. Johnson did not read the letter; she turned it over to the sheriff's department. She was concerned that the defendant had somehow obtained her home address. In that 14-page letter, the defendant wrote, inter alia,

> I don't know why you have done me this way. I don't understand why you made up the story you did. . . . .When I passed you, you waved and smiled at me. When I passed by you again at Joe's Junk yard, you waved again. . . . I find it hard to believe you didn't know I was following you. . . . I also want you to know I seen you try to break into my car. And I seen you get my tag number when you told me to shut the door. . . .
>
> . . . The way you have done me is by far worser th[a]n anything I have done to you. . . .
>
> . . . But when I prove the truth you will be found guilty of false imprisonment and for [lying] under oath. . . . If you had told the truth it would have saved you from doing time yourself. . . .

In a separate, two-page letter dated April 23, 2003, the defendant wrote, inter alia,

> You made a big mistake by [lying] on the stand. Jessica when they see that you lied and they will and they will see I'm telling the truth, you will be charge[d] with the following.

1. false reports
2. false imprisonment
3. perjury

> My promise to you is that I'll never hurt you again. And as you seen that I kept my promise to you that day. . . . You know I never forced you.
>
> . . . I know you didn't mean to hurt [your daughter]. And I will testify for you on your behalf that it was an accident.

The record contains a third letter to Ms. Johnson, dated April 28, 2003, in which the defendant wrote,

> And I promise you if you tell the truth I won't press any charges on you. And I promise to do everything I can to keep you out of jail. And I promise you I [won't] sue you for the hell you have put me through.
>
> . . . [A]nd I got upset with you because you wouldn't just be qui[et] and let me leave. I tr[ied] to leave three or four times and you would start talking again. I got upset with you and I tr[ied] to grab you. I've confessed to what I have done. What I can remember. I was very exhausted. That's why I quit having sex with you. . . . I really just wanted to meet you because I thought you were very beautiful and because you waved at me and smiled two times. . . . When you said I will suck your dick or fuck you if you want to[] I was confus[ed] and afraid that you were going to stab me again. And confused because I had just struggled with you and you want to have sex. I was afraid to turn you down.

These letters demonstrate a dangerously skewed perception. The defendant views himself as a victim who grabbed Ms. Johnson because she kept talking and who became afraid to turn down having sex with her. He exhibits no understanding of his wrongdoing, accuses Ms. Johnson of lying, and implicitly threatens to have her charged with criminal offenses. Any woman who smiles or waves at the defendant is a potential target inasmuch as he displays no impulse control, even when children are present. Both society and the victims in this case need to be protected from this defendant's inability or unwillingness to conform to accepted social norms. *See State v. Torian Dillard*, No. W2005-00152-CCA-R3-CD, slip op. at 15 (Tenn. Crim. App., Jackson, Apr. 19, 2006) (upholding "dangerous offender" consecutive sentencing based in part on "chilling" letters sent while defendant awaited trial); *State v. James Albert Adams*, No. M1998-00468-CCA-R3-CD, slip op. at 25-26 (Tenn. Crim. App., Nashville, dec. 15, 1999) (affirming consecutive

sentencing as a "dangerous offender" based in part on "disturbing letters and pictures" sent to the victim from jail).

We, therefore, conclude that the trial court did not err in determining the length of the defendant's sentences, except for the especially aggravated kidnapping conviction, or in ordering consecutive alignment of the felony convictions.

III. Conclusion

For the foregoing reasons, we modify the sentence for especially aggravated kidnapping, but otherwise, affirm the defendant's convictions and the trial court's sentencing determinations.

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JAMES CURWOOD WITT, JR., JUDGE